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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,233	08/24/2001	Ray Franklin	019411-001410US	3401
20350 7590 06/09/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER PEZZUTO, ROBERT ERIC				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
06/09/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RAY FRANKULIN and STAN JONES

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Application 09/939,233  
Technology Center 3700

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Mailed: [Date of mailing]

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Before DALE M. SHAW *Chief Appeals Administrator*.  
SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received at the Board of Patent Appeals and Interferences on February 21, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

The Examiner's Answer mailed May 10, 2007, is defective. The appendix,

Evidence Relied Upon (pg. 2) , states that “No evidence is relied upon by the examiner in the rejection of the claims under appeal.” A review of the file reveals that prior art was applied to the rejections of the claims on appeal; see the appendix, Grounds of rejection (pg. 3).

In accordance with MPEP ' 1207.02, the AEvidence Relied Upon@ (section 8) should include:

- (8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the Examiner must mail a PTOL-90 that will correct and amend the Evidence Relied Upon section and identify all references used to reject the claims on appeal.

### CONCLUSION

Accordingly, it is

**ORDERED** that the application is electronically returned to

- 1) hold the Examiner's Answer mailed May 10, 2007, defective;
- 2) issue and mail a Form PTOL-90, amending and/or correcting the Examiner's Answer (Evidence Relied Upon); and

Application 09/939,233

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of

Patent Appeals and Interferences at 571-272-9797

DMS/gjh

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